

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL A. BURNHART,

Petitioner,

v.

CHIEF WRZENSKI,

Respondent.

Case No. C07-5326RBL-KLS

ORDER DENYING
PETITIONER'S REQUEST FOR
RELEASE

This matter is before the Court on petitioner's motion and request for release pending appeal. (Dkt. #13). Petitioner is currently a prisoner in the custody of the Washington State Department of Corrections pursuant to a sentence and conviction in state court. The Court, having reviewed petitioner's response and the balance of the record, hereby finds and orders as follows:


Petitioner requests in his motion that the Court consider releasing him pending his "appeal," citing to the "Bail Reform Act of 1984," which he claims requires a federal court to release or detain a defendant pending appeal of his or her conviction or sentence. According to petitioner, the federal petition for writ of *habeas corpus* he currently has pending before this Court constitutes such an appeal. He thus requests that the Court both grant his request for bail and order the Washington State Department of Corrections to release him immediately pending his "federal Appeal." (Dkt. #13, p. 3).

A federal petition for writ of *habeas corpus*, however, is not an "appeal" of a state court criminal

1 proceeding, but rather is a means through which a state court conviction or sentence may be challenged in
2 federal court after the state proceeding has already become final. That is, federal *habeas corpus* is a civil
3 action that only comes into play once all avenues of direct appeal and collateral attack on the conviction
4 or sentence in state court have been exhausted. Nor do the rules governing federal *habeas corpus*
5 petitions provide any right to release pending resolution thereof. For the foregoing reasons, therefore,
6 petitioner's motion and request for release pending appeal (Dkt. #13) hereby is DENIED.

7 The Clerk shall send a copy of this order to petitioner and counsel for respondent, if any.

8 DATED this 1st day of November, 2007.

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12 Karen L. Strombom
13 United States Magistrate Judge
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